

FUTURES TRADING ACT OF 1986

APRIL 29 (legislative day, APRIL 28), 1986.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 2045]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 2045, as amended by the Committee, extends the authorization for appropriations for the Commodity Futures Trading Commission for 6 years. The bill also makes other changes in the Commodity Exchange Act to "fine-tune" the Commission's ability to regulate the futures industry.

COMMITTEE AMENDMENT

The Committee amendment strikes out all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute.

SUMMARY OF MAJOR PROVISIONS

The major provisions of S. 2045, as amended by the Committee, are as follows:

Reauthorizations.—The bill authorizes the appropriation of such sums as are necessary to carry out the Commodity Exchange Act ("Act") for an additional 6 years (through September 30, 1992). (Sec. 402.)

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Leverage.—The bill repeals section 19 of the Act, which provides the authority for the regulation of leverage transaction merchants, and makes several conforming changes that delete references to leverage transactions. The effective date of these provisions is delayed until 2 years after the effective date of the bill. (Secs. 201-208.)

Service of subpoenas outside the United States.—The bill explicitly authorizes the Commission to serve subpoenas outside the territorial limits of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country. (Sec. 102.)

Fraudulent conduct.—The bill clarifies that the Commodity Exchange Act penalties for fraudulent conduct apply to futures transactions, whether or not such transactions are executed on or subject to the rules of an exchange. (Sec. 101.)

Ex parte appointment of temporary receivers.—The bill authorizes the Commission to seek the ex parte appointment of temporary receivers to administer restraining orders and to perform such other duties as the court considers appropriate. (Sec. 103.)

Registered futures association disciplinary action.—The bill removes the automatic stay of disciplinary action taken by a registered futures association when the subject of such action appeals the case to the Commission and makes the issuance of such stays discretionary with the Commission. The Commission is required, however, to establish standards for expedited procedures to be used in the consideration of requests for stays. (Sec. 301.)

Commission review of disciplinary action taken by a registered futures association.—The bill revises current law to—

(1) limit Commission review to final actions of the registered futures association;

(2) specify that the review hearing before the Commission may consist of an examination of the record made before the association and an opportunity to present reasons for affirming, modifying, or setting aside the association's decision;

(3) authorize the Commission to remand cases to the association for further proceedings; and

(4) provide that appeals of Commission orders entered in such cases be reviewed in an appropriate court of appeals. (Sec. 302.)

Limitations on activity.—The bill authorizes Commissioners and Commission staff to invest in actual commodities if the transaction is not prohibited by Commission rule, if no nonpublic information is used in deciding to enter into the investment transaction, and if the investment is not made through the use of any instrument regulated by the Commission.

The Commission is also authorized to permit Commissioners and Commission staff to engage in any transaction or investment activity otherwise prohibited under the Commodity Exchange Act if the Commission determines that such activity is not contrary to the public interest or otherwise inconsistent with the purposes of section 9 of the Act. (Sec. 401.)

BACKGROUND AND NEED

The Commodity Exchange Act is based on the findings and conclusions of Congress that (1) transactions, known as "futures" and "options", are affected with a national public interest; (2) such transactions are carried on in large volume by the public, as well as by persons engaged in the business of buying and selling commodities in interstate commerce; (3) the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining prices of commodities and their products and by-products; and (4) such transactions can be manipulated or controlled. A fundamental purpose of the Commodity Exchange Act is to ensure fair practices and honest dealing on the commodity exchanges and to control manipulative activity and speculative excesses that demoralize markets and cause injury to producers, consumers, and the exchange themselves.

Futures trading involves the making of contracts under which the parties agree to buy and sell specified quantities of certain commodities at fixed prices for delivery at some future date. The Commodity Exchange Act requires that future trading in commodities be conducted on a commodity exchange designated as a "contract market" by the Commodity Futures Trading Commission. Contracts to buy and sell commodities for future delivery are made by or through a member of such a commodity exchange. A separate market is established for each commodity traded on a contract market. The contract markets have the authority, within limitations, to admit members and select officers; discipline and expel members; determine delivery months and contract terms; fix limits on the amount of permissible price changes during a trading day; and establish margin requirements.

In order to qualify for designations as a contract market, a commodity exchange must meet certain conditions and requirements, including those covering the (1) keeping of certain records and the preparation of reports on futures transactions, (2) prevention of dissemination of false, misleading, or inaccurate commodity information, (3) prevention of manipulation and other abusive trading practices, and (4) inspection of records by the Commodity Futures Trading Commission and the Department of Justice. In addition, the Commission must find that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

The Commodity Exchange Act contains many customers protection provisions and remedies. The Act provides for an express private right of action for certain violations of the Act and directs the Commission to promulgate and administer a regulatory program that includes registration of commodity professionals, segregation of customers' funds by commodity brokerage firms, procedures for the adjudication of customers' claims, monitoring exchange arbitration procedures and disciplinary actions, and licensing of industry self-regulatory futures associations. Moreover, customers are afforded protection through the Commission's power to sue directly for injunctive relief and to invoke a full range of administrative remedies where appropriate to curb unlawful behavior.

The Commodity Futures Trading Commission was created in order to ensure that a single agency would have the responsibility for developing a coherent program encompassing futures trading and related activities. Therefore, Congress vested in the Commission exclusive jurisdiction to develop and implement a strong and sound Federal regulatory policy covering futures trading.

The 1986 reauthorization of appropriations for the Commodity Futures Trading Commission and related legislation is particularly significant, since the Commission completed its first 10 years of operation in April 1985. Congress thus has had an opportunity to evaluate the Commission's development as a regulator, particularly the Commission's recent experience in regulating exchange-traded commodity options; and to examine the changes in the futures industry that have taken place since 1974.

The changes in the futures are reflected by the fact that in fiscal year 1975 approximately 26 million futures contracts were traded; by 1978, the number had grown to 53.2 million contracts, and by 1981 to 101.1 million contracts. This tremendous growth has continued since the last reauthorization in 1982. During fiscal year 1985, for example, 169.5 million futures and options were traded on 13 United States exchanges.

The increase in trading volume has occurred, in part, through increased use of futures and options markets by financial institutions and businesses. During 1984 and 1985, the Commission approved 16 new option contracts and 7 new futures contracts. Among the options approved were 9 options on domestic agricultural commodity futures contracts, the first to be approved under the Commission's agricultural options pilot program. Also approved were options designated on physical commodities: the Amex Commodities Corporation gold bullion option and the Philadelphia Board of Trade Euro-dollar time deposit option.

Three of the seven futures contracts approved for trading by the Commission during fiscal year 1985 extended trading into new areas. In April 1985, the Commission approved the Coffee, Sugar, & Cocoa Exchange's consumer price index futures contract; in May 1985, the Commission approved a long-term municipal bond index contract for trading on the Chicago Board of Trade; and in September 1985, approval was given to the Philadelphia Board of Trade's over-the-counter stock index contract.

ENFORCEMENT PROVISIONS

The bill, as reported by the Committee, makes several changes in the Commodity Exchange Act to clarify or strengthen the enforcement capabilities of the Commodity Futures Trading Commission. The bill clarifies that the principal antifraud provision of the Commodity Exchange Act, section 4b, applies to the sale of off-exchange futures contracts, and that the Commission is empowered under section 6(b) to serve its administrative subpoenas outside the United States. In addition the Committee bill empowers the Commission, when it proceeds on an *ex parte* basis to seek a temporary restraining order freezing the assets of suspected violators, to seek the appointment of a temporary receiver to administer those assets, and to perform such other duties as the court may specify.

Fraudulent practices

The Committee bill deletes the phrase "on or subject to the rules of a contract market" from section 4b of the Commodity Exchange Act to make clear that the proscription against fraud and other abusive practices in section 4b applies to the offer or sale of all commodity futures contracts, whether or not the contracts are traded on exchanges designated as contract markets by the Commission. Therefore, the bill ensures that persons may be held liable for fraud under section 4b in connection with the marketing of illegal, off-exchange futures contracts in the United States.

Since Congress has historically confirmed that all futures trading must take place on designated exchanges, it would be anomalous if section 4b were read narrowly, so as not to apply to the sale of unlawful futures contracts. The amendment, however, removes all doubt as to the applicability of section 4b.

The amendment will also avoid a possible misinterpretation of the Act under which a purveyor of illegal futures contracts could escape prosecution and conviction under section 9(b), which attaches felony penalties for knowing violations of section 4b. In two recent court decisions involving private litigation, Federal district courts have held that section 4b is inapplicable to foreign futures contracts because these contracts are not traded on or subject to the rules of a contract market in the United States.

To assure that section 4b will not be applied to activities occurring on foreign exchanges, the Committee bill adds a provision to exempt such activity from the reach of that section.

Extraterritorial service of subpoenas

The Committee bill amends section 6(b) of the Commodity Exchange Act expressly to empower the Commission to serve administrative subpoenas on persons located outside the United States, to ensure the attendance of such persons at places designated in connection with Commission investigations. The amendment would also apply to subpoenas for the production in the United States of books, records, and other documents located abroad.

This amendment is necessary in view of the decision of the Court of Appeals for the District of Columbia in *Commodity Futures Trading Commission v. Nahas*, 738 F.2d 487 (D.C. Cir. 1984), which held that the current provisions of section 6(b) do not authorize the Commission to serve investigatory subpoenas outside the territorial limits of the United States.

The Commission has consistently viewed its regulatory authority under the Act as extending to all market participants, regardless of their nationality or location. If allowed to stand or to become widely accepted, the *Nahas* decision could impede or defeat enforcement of Commission subpoenas directed to foreign nationals. This could create a safe haven for those who would violate the Act by conducting transactions on American exchanges from abroad. If allowed to stand, the Court of Appeals' ruling may foreclose the Commission from investigating the conduct of foreign market participants, regardless of the magnitude of their involvement in United States markets, so long as they, or other witnesses, remain outside the territorial limits of the United States.

Under the court's ruling in the *Nahas* case, even though a foreign participant's conduct is clearly subject to the requirements of the Act, and despite the existence of sufficient contacts with the United States to establish in personam jurisdiction as a matter of due process, the foreign participant may only be subject to the Commission's subpoena power if service can be made within the territorial limits of the United States. The Committee bill removes the uncertainty created by the *Nahas* decision and complements the Commission's existing regulatory program for market surveillance.

Ex parte appointment of temporary receivers

Section 6c of the Commodity Exchange Act authorizes the Commission to bring an action in Federal court to enjoin unlawful conduct. Prior to the enactment of the Futures Trading Act of 1982, section 6c prevented the Commission from seeking a restraining order on an ex parte basis. In 1982, Congress amended section 6c to permit the courts to issue ex parte restraining orders that would, among other things, prohibit persons from destroying or altering books and records and from withdrawing or dissipating funds, assets, or other property.

This new authority has worked well but has created a dilemma. As presently written, section 6c does not expressly empower the court to appoint a receiver on an ex parte basis to protect the books, records, and assets frozen by the issuance of the ex parte temporary restraining order. Instead, a receiver may be appointed only after notice and a hearing on the application for the appointment of a receiver. The period between the issuance of the ex parte restraining order and the hearing on the application for the appointment of a receiver may be as long as 15 to 20 days. During this critical period, no independent person is in place to manage the operations of the business whose books, records, and assets have been frozen. Thus, the books, records, and assets that have been frozen may be substantially disposed of or dissipated.

To correct this situation, the Committee bill will permit the Commission to seek the ex parte appointment of a temporary receiver to administer any ex parte restraining order issued by a court under section 6c and to perform such other duties as the court may specify. If appointed, the temporary receiver will be in place to protect the books, records, and assets of the defendant and to carry on the defendant's day-to-day operations, for example, by paying salaries and other expenditures and by meeting margin calls or liquidating unprofitable market positions. The temporary receiver will protect the assets of the defendant, which ultimately can be distributed to the defendant's customers.

LEVERAGE TRANSACTIONS

Title II of the Committee bill amends the Commodity Exchange Act to repeal section 19 and delete most other references to leverage transactions from the Act. Under this amendment, the Commission would neither be required nor authorized to regulate leverage transactions as a distinct form of commodity instrument. The Committee bill also delays the effective date of title II for a period

of 2 years from the date of enactment to give existing leverage firms an opportunity to make a transition out of the business of being a leverage transaction merchant.

Under the Commodity Futures Trading Commission Act of 1974, the Commission was given exclusive jurisdiction to regulate gold and silver leverage transactions. In 1978, Congress added section 19 to the Commodity Exchange Act. In this section, Congress banned leverage transactions in agricultural commodities, authorized the Commission to prohibit certain leverage transactions, and extended the Commission's exclusive jurisdiction to leverage transactions in all other commodities. Between 1974 and 1982 the Commission adopted two moratoria on the entry of persons into the leverage transaction business and a broad antifraud rule applicable to leverage transactions.

The Futures Trading Act of 1982 directed the Commission to regulate leverage transactions in gold and silver bullion and bulk coins and in other commodities, except those subject to the 1978 prohibition on leverage transactions in agricultural commodities. As a result of the direction given by Congress in 1982, the Commission issued interim final leverage regulations in 1984 and 1985 that were applicable to both long and short leverage transactions in gold and silver bullion and coins, copper, platinum and certain foreign currencies. Two firms have been registered as leverage transaction merchants under these regulations.

Notwithstanding the foregoing, however, the leverage transaction issue has remained controversial at the Commission and in the futures industry. The Commission testified that the historical statutory distinction between leverage transactions and futures contracts is unjustified and that leverage transactions are legally and economically indistinguishable from futures contracts and, therefore, do not warrant separate statutory treatment.

The Committee bill eliminates the statutory disparity between leverage transactions and futures contracts, but authorizes a 2-year delay in the implementation of the statutory changes to give existing leverage transaction merchants time to make a transition out of leverage sales. It may be possible that the current leverage firms could continue in business by undertaking the marketing of cash or installment sales transactions. Of course, this business would be subject to State regulation.

The Committee believes there is no easy answer to the question of the regulation of leverage transactions, but it notes that the two leverage firms as they currently do business, do not fit within the general regulatory framework of the Commodity Exchange Act applicable to futures transactions. Congress passed legislation regulating futures trading—despite the opposition of some who wanted to ban such trading—because such trading performs two very important functions in our economy, that of price discovery and the shifting of risk. Price discovery in the futures markets aids cash sellers of commodities by giving these sellers a reliable gauge to use in pricing their produce. The shifting of risk from those who wish to avoid it to those who are willing to assume it (in the hope of making a profit) facilitates trade and commerce by allowing merchants to concentrate on what they do best, the production and

marketing of a product, without having to worry about changes in interest rates or the value of their inventories.

Leverage transactions, as currently conducted, serve neither of these purposes. These transactions do not justify the expenditure of the Government funds that must be used to ensure that those who engage in this activity are adequately protected.

The 2-year delay in the implementation of title II of the Committee bill will give the two leverage firms adequate time to restructure their businesses. They can elect to trade their contracts on an exchange, engage in cash and carry precious metals sales, or some other form of enterprise.

REGISTERED FUTURES ASSOCIATIONS

Disciplinary actions

The Committee bill promotes the Commission's continuing oversight program over registered futures associations. At the present time, there is only one registered futures association, the National Futures Association (NFA). NFA's disciplinary system for violations of its rules by members or their associated persons includes a summary procedure called a "member responsibility action." The Commission generally regards the member responsibility action as a powerful and appropriate tool for the NFA. However, the present provisions of section 17(h) of the Act are an impediment to the effective use of the member responsibility action.

Section 17(h) provides that any aggrieved person may appeal a registered futures association disciplinary action to the Commission and that the filing of such an appeal triggers an automatic stay of the disciplinary action. While the Commission may lift the stay under current law, it may do so only after notice and opportunity for a hearing. As a result, the effectiveness of the disciplinary action can be reduced, particularly when immediate action is necessary to protect markets, customers, or other NFA members.

The Committee bill removes the automatic stay provisions from current law. The provision in the Committee bill makes the stay provisions associated with futures association disciplinary actions parallel with those for exchange disciplinary actions. Under the Committee bill, the Commission is to set standards for expedited procedures to be used in the consideration of requests for stays.

Commission review of association action

The Committee bill also amends existing law to make explicit that Commission review of NFA disciplinary actions is available only for final actions, precluding the disruption of the futures association disciplinary process by untimely appeals to the Commission. The bill also authorizes the Commission to review only the record before the futures association and the submissions of the parties. The actual standards for Commission review would, however, remain essentially unchanged.

In addition, the Committee bill amends section 17(i)(3), which deals with the denial of membership in registered futures associations, to conform the standards for Commission review of a registered futures association decision denying membership with those standards applicable to association disciplinary actions.

Rule review procedure

Lastly, the Committee bill amends section 17(j) of the Act to eliminate the requirement that the Commission approve additions to or changes in the rules of a registered futures association within 30 days, unless a longer period is requested by the futures association or the Commission is unable to complete its review within the 30-day period. No such limitation exists in section 5a(12), which applies to Commission approval of contract market rules. The legislative history of sections 5a(12) and 17(j) does not indicate why the otherwise parallel rule review procedures differ in this relatively minor respect. The Committee bill makes the rule review process for rules promulgated by registered futures associations generally the same as the process governing other self-regulatory organizations.

The Committee also believes that repeal of the 30-day review period is warranted since it has little practical effect on the amount of time the Commission devotes to the review of a specific association rule. By its action in repealing this provision, however, the Committee does not intend that any necessary rule review be untimely. Indeed, the Committee intends that the Commission act expeditiously to review any association rule that is subject to the review requirement.

AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

Prohibited transactions

Section 9(d) of the Commodity Exchange Act makes it a felony for a Commissioner or Commission employee to participate, directly or indirectly, in commodity futures, options, or leverage transactions or, with certain limited exceptions, in investment transactions in an actual commodity. The Committee bill eases some of these restrictions and empowers the Commission to administer section 9(d) in a flexible manner to assure that transactions that do not pose a conflict of interest or appearance of conflict of interest are not subject to the broad prohibitions in current law.

The prohibitions in current law have become increasingly burdensome for the Commission and its staff as the commodity markets continue to expand into new areas and new products are traded on futures exchanges. In 1982, for example, Congress amended section 9(d) to permit Commissioners and Commission employees to invest in United States Government securities, certificates of deposit, or similar financial instruments, so long as no nonpublic information is used and the transaction is not made through an instrument regulated by the Commission.

The Committee believes there is no reason why the philosophy underlying this amendment should not apply to investments in other actual commodities. The Commission does not regulate the cash market for actual commodities and, so long as no nonpublic information is used in making a decision to buy or sell and the commodity options or futures markets are not employed in making the purchases or sales, the Committee believes that the conflict of interest concerns underlying section 9(d) are not raised. The bill

will generally permit Commissioners and employees to invest in actual commodities under those circumstances, subject to Commission rules prohibiting particular transactions that may raise a conflict of interest or appearance of conflict of interest.

As noted above, current law restricts Commissioners and Commission employees from engaging in futures or options transactions. Arguably, these provisions apply to futures hedging activities undertaken in a farming operation in which a Commission employee has a financial interest, even when the employee has no knowledge of or control over the specific trading decisions. In addition, these provisions could arguably prevent a Commission employee from owning an interest in a mutual fund that hedges its stock portfolio using stock index futures contracts. These possible interpretations of existing law may make it increasingly difficult for the Commission to recruit and retain qualified personnel. The Committee bill will ease these restrictions by permitting the Commission to fashion exemptive rules from the general prohibitions contained in existing law. These exceptions will be made only when the Commission has determined that the exemptions pose no conflict of interest or appearance of conflict of interest and are otherwise consistent with the congressional intent expressed in the enactment of section 9(d).

The Committee understands that the Commission would use this authority sparingly. Also, the bill does not change existing provisions of the Act prohibiting Commissioners and employees from divulging confidential information to third parties.

Authorization for appropriations

Section 12(d) of the Commodity Exchange Act authorizes the appropriation of such sums as may be required to carry out the provisions of the Act through the fiscal year ending September 30, 1986. The Committee bill extends the authorization for such appropriations for 6 years, through the fiscal year ending September 30, 1992.

The Commission has undergone two previous "sunset" reviews in 1978 and 1982 in which significant changes to the Act were made. The Committee does not believe that major changes to the Act are necessary at this time. However, sunset reviews place a significant burden on a small agency such as the Commission. Committee oversight of the activities of the Commission can and will occur as particular issues arise, but the 6-year reauthorization should provide necessary stability and continuity to the activities of the Commission.

COMMITTEE CONSIDERATION

A. HEARINGS

On Wednesday, February 19, and Thursday, February 20, 1986, the full Committee held hearings on the reauthorization of funds for the Commodity Futures Trading Commission.

In his opening statement, Senator Richard Lugar said the efficient and effective oversight of the futures industry is vital to the well-being of most businesses and to the economy of the nation. He

said the hearings were designed to focus on the enforcement powers of the Commodity Futures Trading Commission ("Commission"), the National Futures Association, and the State and local officials who have authority to control the sale of off-exchange instruments.

Commission Chairman Susan M. Phillips outlined the proposals made by the Commission in S. 2045, explaining that major revisions were made in the Commodity Exchange Act in 1978 and 1982 and that the Commission did not believe such major changes were needed at this time.

Chairman Phillips said a number of changes had been proposed by the Commission in the area of enforcement and appellate review. First, S. 2045 proposed to clarify the fact that the Commission has the authority to prosecute fraud committed by off-exchange futures operators.

Another proposal would clarify the Commission's authority to serve investigatory subpoenas on persons outside the United States. The Commission proposed the amendment, said Chairman Phillips, because the U.S. Court of Appeals for the District of Columbia Circuit recently ruled that Congress had not expressly granted such authority to the Commission.

The Commission also requested the authority to seek the ex parte appointment of a receiver when it seeks an ex parte order freezing a firm's assets. Such authority, said Chairman Phillips, is important to guarantee the preservation of customer assets during the period a restraining order is in effect.

Chairman Phillips said the Commission sought to eliminate certain two-step appeal procedures by proposing that persons aggrieved by a final Commission order or rule obtain review of that order or rule only in a U.S. court of appeals. Currently, certain of these appeals are filed in a U.S. district court.

Chairman Phillips also explained the Commission's request that Congress eliminate the Federal regulation of leverage transactions. She said the Commission had considered retaining the current moratoria on new entrants into the leverage business and also lifting the moratoria, if certain regulatory responsibilities were assumed by the National Futures Association. The Commission voted to eliminate Federal regulation of leverage because of concern with the expansion of off-exchange instruments and the large commitment of Commission resources that would be necessary to provide regulatory oversight. The Commission also believes that leverage contracts are identical to futures contracts and, accordingly, the sale of leverage contracts should occur on exchanges under the supervision of self-regulatory organizations.

The Commission also sought changes relating to the National Futures Association, including an amendment to make the Commission's authority to alter or supplement NFA rules parallel to, and no less broad than, the Commission's comparable authority with respect to the rules of contract markets.

Chairman Phillips said the final part of the bill would make changes in standards for permissible investments undertaken by Commissioners and Commission personnel and would provide for a 6-year reauthorization.

Several Senators expressed concern about the negotiations between certain exchanges and the Commission over the Commission's audit trail rule. Chairman Phillips explained that the Commission had asked the exchanges to design a system that could comply with the new rule, and that meetings between the Commission and these exchanges had occurred for purposes of discussing a concept that she said had "a good deal of potential."

In response to a question from Senator Lugar, Chairman Phillips explained that one of the reasons for the new audit trail rule was to solve the problem of floor brokers trading ahead of customers, which can occur when floor brokers trade for both customers' accounts and their own account. She also stated that, during a Commission investigation of potential manipulation of the grain markets in 1983, the Commission was unable to answer certain questions about intra-day trading activity.

Senator Melcher asked about the effect of the Commission's proposal on leverage, and Chairman Phillips stated the Commission envisioned that existing leverage firms would move toward an installment or cash and carry operation, subject to the commercial laws of the individual States in which they operate.

Robert K. Wilmouth, President and Chief Executive Officer of the National Futures Association, said the NFA had fulfilled the promise made by the futures industry in 1982 by relieving the regulatory burdens of the Commission, filling regulatory gaps that existed at that time, and providing and promoting high ethical standards for the industry. He also pointed out that the NFA has accomplished these goals as a self-financed body.

He further stated that the NFA supported the proposal to make the Commission's granting of a stay discretionary in cases in which the aggrieved party in an NFA disciplinary action files an appeal with the Commission. He also supported the proposal to refine the Commission process of reviewing NFA actions.

Mr. Wilmouth also testified that NFA opposed the proposal to delete the present requirement that the Commission act on NFA rule proposals within 30 days, unless a longer period is requested, and that NFA also opposed the proposal to allow the Commission to alter or supplement NFA rules. Mr. Wilmouth stated that whatever incentives for timely consideration of NFA proposals there are should not be eliminated and that authority for the Commission to alter or supplement NFA rules would have an adverse effect on the NFA and is simply not needed.

Senator McConnell, in questioning, asked why the NFA had displayed a reluctance to participate in the oversight of leverage transactions, and Mr. Wilmouth replied that the NFA and its Board of Directors had never really been asked to consider such a proposal.

Leo Melamed, Special Counsel to the Board of the Chicago Mercantile Exchange, had a number of complaints about the Commission. He said the audit trail rule was a futile requirement that would damage liquidity in the markets and impose a cost that would be borne directly or indirectly by hedgers and consumers. He said the exchanges share the Commission's desire for an effective audit trail, but that it should be accomplished in a way consistent with the free market system.

Mr. Melamed said that the Commission's proposed capital requirements rule for futures commission merchants was an excessive response to an individual case, and that the Commission acted without sufficient study or consultation with private sector experts.

He also said that the continuing policy of restricting the number of options contracts that may be traded on each futures exchange put the commodity exchanges at a competitive disadvantage with the securities exchanges.

He also urged that the Commission's limitation on the number of agricultural options contracts denies many farmers an important marketing tool and ought to be lifted.

He also said that the Commission regularly duplicates investigatory procedures and reprosecutes persons who have already been disciplined by exchanges, and he opposed the Commission's proposal for additional rulemaking authority over the NFA.

John F. Gilmore, Chairman of the Chicago Board of Trade, said that despite the high degree of public confidence in the markets, the Commission rulemaking process threatens the markets. He, too, opposed the audit trail rule, but also expressed the industry's desire for an improved audit trail.

He asked for a 2-year reauthorization and reform of the Commission's rulemaking process. He endorsed expansion of and permanent status for the options pilot program, including agricultural options; supported the proposal to treat leverage contracts as futures contracts and trade them as such; asked for congressional direction to the Commission to increase agricultural speculative limits and to modernize its hedging definition; and called for expedited approval of new futures contracts.

He also opposed the proposal to give the Commission greater review of NFA rules.

Alan J. Brody, President of the Commodity Exchange, Inc. (COMEX) in New York, traced the background of the collapse of a brokerage firm known as Volume Investors Corporation and its effect on COMEX. He explained that the proposal to change the net capital requirements for brokerage firms and the initiation of studies of customer-account insurance were both effects of the Volume situation.

He supported the Commission's proposal to treat and regulate leverage contracts as futures contracts, and said that COMEX had undertaken a study of new technology needed to meet the audit trail requirement. He charged that the Commission too often takes additional disciplinary action in a case in which an exchange or the NFA has already taken disciplinary action. He said the Commission ought to be required to do more complete cost-benefit analyses of proposed rules before their adoption.

Senator Harkin noted that other commodity exchanges, such as the Kansas City and Philadelphia exchanges, are able to record trades within 1 minute with no adverse effects, and asked why such a rule is detrimental to the Chicago exchanges. Mr. Melamed explained that the much larger volume of transactions handled on the Chicago exchanges makes the rule more threatening to the operations of those exchanges.

The final panel to testify at Wednesday's hearing was Louis E. Carabini, President of Monex International, Newport Beach, Cali-

fornia, and Harvey Kochen, Vice President, International Precious Metals Corporation, Fort Lauderdale, Florida.

Both witnesses devoted their testimony to opposing the proposal to ban leverage contracts as they are now constituted. Mr. Carabini said that his firm, Monex International, had spent over \$1.4 million since 1984 to meet the leverage regulations promulgated by the Commission.

He argued that there are indeed differences between leverage contracts and futures contracts, and suggested that if the Commission's proposal was based on insufficient regulatory resources, the NFA could assume regulatory responsibility for leverage transactions. He said that, as a major institutional hedger in the futures markets, Monex is a source of liquidity in those markets.

Mr. Kochen also explained there is a difference between leverage and futures contracts, saying a leverage contract is an agreement to purchase a commodity from a dealer at a fixed price for later delivery, and a futures contract is an agreement to purchase a contract.

He said the current regulation of leverage contracts is sufficient and effective, thereby protecting leverage customers. He added that the Commission is the proper oversight agency and regulator of leverage transactions, and that the burden placed on the Commission could be alleviated by transferring direct regulation of leverage transactions to the National Futures Association.

Mr. Carabini, while noting that there was a high level of customer complaints involving leverage transactions in the early 1980's stated that since the new regulations have been in place, such complaints have dropped dramatically.

At Thursday's hearing, the first panel to testify was John M. Damgard, President, Futures Industry Association; James A. Layton, President, Clayton Brokerage Company, St. Louis, Mo.; and Gary L. Seevers, Vice President, Futures Department, Goldman, Sachs and Company.

Mr. Damgard supported the 6-year reauthorization and commented on a number of regulatory issues. He urged removal of the limitations on expansion of the options program and asked for a re-examination of the Commission's definition of hedging.

On the issue of insurance for customer account protection, he questioned the costs of such a program and said a sound regulatory framework with competent oversight would be the best means of protecting customers' accounts. He urged caution in the area of legislating reforms of off-exchange transactions and voiced concern about the double jeopardy arising from the Commission prosecuting violations for which the NFA or exchanges have already imposed disciplinary action. He urged cooperation between the Commission and the exchanges in resolving the question of the audit trail rule.

Mr. Layton said that agricultural options have been a successful and useful tool for farmers and ranchers seeking marketing alternatives, and he noted that cattle options have been the most popular of the agricultural options. He said the proposed capital requirement rule would be very restrictive and force many firms out of business. He stated that the audit trail rule should not result in systems so complicated they interfere with the workings of the market.

Mr. Seevers emphasized in his testimony the need for the Commission to update its definition of hedging. The definition, he said, is the basis for making exemptions from speculative position limits, and the definition needs revision because it forms a basis for institutional investors to obtain exemptions from registration as commodity pool operators.

He suggested the Commission make four specific changes in the definition of hedging: recognize the concept of "prudent risk management" by institutional investors in the general definition of hedging; under the enumerated definition of hedging, recognize as a hedge long futures positions against holdings of cash or cash-like positions; consider under the nonenumerated portion of the definition of hedging so-called synthetic securities that are heavily or totally dependent on futures or options positions; and complete the ongoing effort to incorporate options into the definition of hedging.

Asked by Senator Zorinsky to discuss problems with the current definition of hedging, Mr. Seevers said it omits options, thus making it difficult for exchanges to grant exemptions from the speculative position limits for options. Another weakness, he said, is that managers of assets make decisions that involve the constructive use of futures contracts when the decisions really do not involve risk reduction, which is one of the elements in the definition of hedging.

Testifying on the next panel of witnesses were Warren W. Lebeck, a member of the Executive Committee and Board of Directors, National Grain Trade Council; David C. Lucterhand, President, the Lucterhand Group; and A. Joseph Cramblit, President, Geldermann Inc., and representing the National Grain and Feed Association.

Mr. Lebeck favored a reauthorization period of at least 6 years and recommended that the contract approval process be shortened from 1 year to 6 months. He opposed user fees as harmful to self-regulation, opposed the proposed capital requirement changes, and said the Commission's audit trail rule would be harmful to trading. With regard to leverage transactions, Mr. Lebeck testified that the Commission should regulate only contracts traded on licensed contract markets.

Mr. Lebeck said the National Grain Trade Council supports the Commission proposal to eliminate the automatic stay of NFA disciplinary actions but opposes the Commission proposal for more power over NFA's rules.

Mr. Lucterhand talked about the requirement in the 1985 farm bill to require the Secretary of Agriculture to conduct a study, with the Commission, to determine how producers might use agricultural futures and options markets to protect their incomes. He said this program offers the opportunity for beginning a transition to a free market in grain prices while maintaining price supports at current levels with lower and predictable cost of the Government. Mr. Lucterhand also supported expansion of the agricultural options pilot program.

Mr. Cramblit said that margin-setting responsibilities most properly lie with individual exchanges. He recommended that no added provisions for the regulation of cash commodity forward-contracting be included in the bill. He urged an extension of the pilot pro-

gram for options, and said full authorization should be considered if it continues its current degree of success. Mr. Cramblit recommended a 6-year extension of the Commodity Exchange Act.

The last panel of witnesses to testify was made up of Theodore Thomte, President, National Association of Futures Trading Advisors; and Phillip A. Feigin, Chairman, Commodities Committee, North American Securities Administrators Association.

Mr. Thomte said the streamlined registration procedures developed by the NFA have been successful. He also complimented NFA's arbitration program and said NFA's audit program is off to a good start and should be built on and expanded. He supported many of the Commission's proposed changes to strengthen enforcement efforts of the Commission and the NFA, and explicit proscriptions against fraud in off-exchange transactions.

Mr. Feigin said the present relationship between the Commission and State enforcement agencies is excellent. He supported the Commission's proposals for the enhancement of its enforcement powers. He strongly supported the proposal to eliminate leverage contracts from separate recognition and treatment under the Commodity Exchange Act. He said there is no reason or justification for leverage contracts, and in some respects they are inherently unfair to the consumer.

Gregory Glynn of Washington, D.C., the last witness to testify, testified against the Commission's proposals to delete the automatic stay and right to oral argument provisions of sections 17 (h) and (i) of the Commodity Exchange Act, which deal with Commission review of disciplinary actions taken by the NFA against its members. He questioned whether the proposals would deny due process under the Fifth Amendment in view of the summary, ex parte nature of the NFA proceedings.

B. COMMITTEE MARKUP

The Committee markup on S. 2045 was held on Tuesday, March 25, 1986.

Antifraud provisions

The Committee discussed the Commission's proposal to clarify that the antifraud provisions of section 4b of the Commodity Exchange Act apply to the sale of futures contracts, regardless of whether these contracts are traded on a Commission-designated exchange. Chairman Helms commented that some foreign commodity exchanges had voiced objections to the provision. Committee staff then indicated that an amendment to the Commission's provision had been drawn and that the amendment would exclude from the Commission's proposal those activities occurring on boards of trade, exchanges, or markets located outside the United States, or activities occurring on the clearinghouses of these institutions. The Committee approved the Commission's proposal, as amended.

Extraterritorial service of subpoenas

The Committee also discussed the proposal to authorize the Commission to serve administrative subpoenas on persons located outside the United States and require production of books and records

from such persons. The Chairman noted that the Committee had received a letter from the Commission explaining the proposal for extraterritorial service of subpoenas and the scope of its section 4b antifraud proposal and asked for and received permission to insert the text of the letter in the markup record. The Committee then approved the Commission's proposal for extraterritorial service of administrative subpoenas.

Ex parte appointment of temporary receivers

The Committee approved a Commission proposal to authorize the Commission to seek the appointment of a temporary receiver, on an ex parte basis. The ex parte receiver would protect the books, records, and assets frozen by the issuance of any ex parte temporary restraining order.

Leverage transactions

The Committee debated at length the Commission's proposal to amend the Commodity Exchange Act to repeal the Commission's authority to regulate leverage transactions as a category separate from futures contracts. Senator Wilson opposed the Commission's proposal, stating that the current leverage firms are legitimate businesses, that the firms would be closed down if the Commission's proposal was adopted, and that such action would be unfair.

At the request of Chairman Helms, Chairman Phillips of the Commodity Futures Trading Commission outlined the Commission's reasons for seeking repeal of the leverage provisions, stating that the Commission believes leverage contracts are indistinguishable from futures contracts and should be regulated as futures contracts. Chairman Phillips also stated that the public had experienced difficulty distinguishing between bona fide futures contracts and leverage contracts.

Senator Lugar stated that leverage contracts are in fact futures contracts, but do not operate in the normal way of futures contracts. He also pointed out that, in his view, the persons selling leverage contracts tried to bring their leverage operations under the Commodity Exchange Act to avoid more stringent regulation. Lastly, Senator Lugar pointed out that the Commission's resources are stretched to the limit to deal with the things that legitimately come under the Commodity Exchange Act and that it was time to regulate leverage contracts in the same way as futures contracts, that is, to cause them to be traded on an exchange or to be restructured into something that could comply with State law.

Senator Zorinsky stated that the existing leverage transaction merchants should have time to adapt to the repeal of the leverage provisions. Chairman Helms then offered an amendment to the Commission's provisions that would delay the repeal of the leverage provisions for 2 years. The Helms amendment was agreed to by voice vote, with Senator Wilson recorded as being opposed, and the Commission's proposal, as amended, was adopted by voice vote, with Senator Wilson again being recorded as being opposed.

Registered futures association disciplinary actions

Current law provides that, in the case of disciplinary action taken by a registered futures association, the person subject to the

discipline may appeal its imposition to the Commission, and the filing of such an appeal will automatically stay the imposition of the discipline. The Committee unanimously approved an amendment to delete this automatic stay provision, but authorized the Commission to grant such stays, either on its own motion or at the request of the party subject to the discipline. The Committee amendment also provides that the Commission must establish standards for expedited procedures to be used in the consideration of the request for a stay.

The Committee approved a Commission proposal to make explicit that review of registered futures association disciplinary action is available only with respect to final action and a proposal to repeal the requirement that the Commission act on registered futures association rules within 30 days.

Modification of registered futures association rules

The Committee rejected a proposal to authorize the Commission to alter or supplement certain registered futures association rules. The Commission had requested an amendment to the Act to make its authority to alter or supplement the rules of a registered futures association parallel, but no less broad than, its existing authority over the rules of contract markets. While the Committee understands the Commission's reasons for advancing this proposal, it is unwilling to grant this power in the absence of a showing that the National Futures Association (NFA), the only futures association registered at present, has refused to make appropriate rule changes requested by the Commission. In making its decision, the Committee considered the positive evaluation of NFA contained in the Commission's 1985 report to Congress.

The Committee intends to follow closely the operation of the National Futures Association to ensure that it fulfills its obligations as a self-regulatory organization. The Committee also expects the Commission to continue to exercise its oversight responsibilities over NFA, as currently provided for in the Act. In this regard, the Committee would consider providing the Commission with additional oversight authority, including the power to alter or modify association rules, should the Committee believe that such authority was needed.

Prohibited investment transactions

The Committee approved a Commission proposal to ease some of the restrictions upon the investment activity of Commissioners and Commission employees, so long as such activity does not present a conflict of interest or appearance of conflict of interest.

Authorization for appropriations

The Committee voted unanimously to authorize the appropriation of such sums as may be required to carry out the Commodity Exchange Act through September 30, 1992.

Severability

Senator Melcher raised concerns over the absence of a severability provision in the Committee bill. After some discussion of this issue, the Committee noted that section 10 of the Commodity Ex-

change Act provides that if any provision of the Act is held invalid, the validity of the remainder of the Act shall not be affected. In light of this provision, no severability provision was deemed to be needed for the Committee bill.

Judicial review

The Committee also discussed a Commission proposal to provide that, except for cases where judicial review is already expressly provided for in the Act, judicial review of any Commission rule or final order would occur in an appropriate court of appeals. The Committee debated this proposal at some length, determined that it would affect only a limited number of Commission cases, and voted to retain current law, with Senator Lugar being recorded as being in favor of the Commission proposal.

Cost/benefit analysis of Commission rules

Senator Heflin offered an amendment to section 8a(5) of the Commodity Exchange Act to require the Commission to consider the costs and benefits of and alternatives to all proposed and final rules and publish the Commission's determination with respect to these matters in the Federal Register when such rules are published. In addition, the amendment would have required the Commission to consider whether the proposed or final rule would impair competition, market liquidity, and the price discovery functions of the market.

Senator Lugar expressed opposition to the amendment of Senator Heflin and offered, as a substitute, language to be included in the Committee report. After further debate, the Lugar substitute was adopted.

The Committee believes the Commission should continue its practice, where appropriate, of discussing with interested parties prior to publishing any proposed and final rules the potential costs and benefits of such rules, such as the effect of the rules on market liquidity, competition, price discovery, hedging, and self-regulation.

Audit trail

During the course of the markup, Senator Melcher raised the issue of the Commission's rule regarding the so-called audit trail. The Committee noted that, during the opening hearing on this legislation, Susan Phillips, Chairman of the Commodity Futures Trading Commission, explained to the Committee the purpose of the Commission's new audit trail rule. This rule contains, in part, a one minute timing standard. Chairman Phillips stated that the Commission was seeking to enhance trading surveillance capability through a more effective exchange audit trail system. Chairman Phillips also explained that, following promulgation of the Commission's rule, the two leading Chicago futures exchanges—the Chicago Board of Trade and the Chicago Mercantile Exchange—had proposed a computerized audit trail system to satisfy the Commission's new rule. Chairman Phillips stated that the Commission and the exchanges were exchanging information and ideas concerning this new system and its potential for compliance with the Commission's rule. At the request of various members of the Committee, Chairman Phillips agreed to keep the Committee fully informed on the

progress of the dialogue between the Commission and the exchanges.

Since that hearing, the exchanges have given each CFTC Commissioner a personal demonstration of the exchange audit trail system, known as the Computerized Trade Reconstruction (CTR) system. The exchanges have also submitted to the Commission a written description of this system. In addition, the exchanges conducted a demonstration of this system for the staff of this Committee.

On March 13, 1986, Chairman Phillips, by letter to Subcommittee Chairman Richard Lugar, reiterated that the Commission did not intend its new audit trail regulation to be read in its narrowest, most technical sense. Rather, the Commission's objective in promulgating its new regulation was to achieve the goal of an effective audit trail. Chairman Phillips also stated that the CTR system, as presented by the exchanges, has the capability of meeting the standards of the audit trail regulation.

The Committee understands the Commission to have represented that the CTR system, as presented, is expected to comply with the spirit and letter of the new audit trail regulation. Therefore, as a demonstration of good faith and in reliance on the Commission's statements, the exchanges are now prepared to expend considerable resources in the very near future to begin to implement their system. The Committee endorses the exchanges' decision based on the Commission's and the exchanges' representations.

The Committee welcomes the Commission-exchanges cooperation and dialogue on the audit trail issue and appreciates the good faith efforts of all parties to improve exchange audit trails and trading surveillance capabilities. As the CTR and other systems are implemented, the Committee requests that the Commission continue to provide periodic reports of the progress made in implementing these new systems.

Speculative limits

Senator Leahy raised the issue of the need to reexamine the Commission's speculative limits on agricultural commodities. The Committee notes that some of these limits have not been changed for more than a decade and intends that the Commission reexamine them. The Commission's reexamination should take into account current market conditions, along with the Commission's responsibilities for monitoring orderly markets and avoiding excessive speculation.

Options pilot program

Chairman Helms raised the issue of the need for the Commission to review the status of the options pilot program. The Committee noted that the Commission's options program has been operating for more than 3 years with remarkable success. The largest option contract, the T-Bond option, traded 11,901,116 contracts in 1985, at an average daily volume of 47,040 contracts. T-Bond options enjoyed the heaviest trading volume of any option in 1985, and ranked third in overall trading (including both futures and options) during the past year.

This success has spread to the 20-month-old agricultural options program. Currently, 2,750 cattle and hog options contracts are traded daily, with approximately 35,000 of such contracts outstanding at any one time. In 1985, more than 840,000 soybean options contracts and 363,000 corn options contracts were traded, with an average daily volume of 3,390 soybean contracts and 1,747 corn contracts.

Both financial and agricultural options trading is limited however, by virtue of the options program's "pilot" status, and through the restrictions imposed on the number of options contracts that may be traded at any one time by each Commission-designated exchange.

Markets regulated by the Securities and Exchange Commission are not subject to these limitations and were, for a time, permitted to trade a variety of financial instruments from which CFTC-regulated exchanges were effectively excluded.

Options contracts have proven to be an effective risk management tool in both the agricultural and financial areas. The Committee intends that, consistent with the Commission's resources, the pilot status of the agricultural and financial options trading programs be concluded and that such trading be made permanent. The Committee believes that agricultural and financial options contracts should be approved for trading under the current provisions of the Act and without regard to any regulatory limitations on the number of such contracts that may be traded on a particular exchange.

Definition of hedging

Chairman Helms also expressed some concern with the Commission's definition of hedging. The Committee noted that section 4a(3) of the Commodity Exchange Act authorizes the Commission to define the term "bona fide hedging transactions" for the purpose of exempting such transactions from any position limits that are imposed on speculative futures trading. Pursuant to this authority, the Commission, in 1977, adopted a hedging definition that includes both a specific, itemized list of hedging transactions and a general, conceptual definition of hedging. The Commission's hedging definition also serves, in part, as a basis for identifying those institutional investors that need not register as commodity pool operators.

During the hearings on this bill, a number of futures industry representatives testified that the current hedging definition, which has not been modified in almost 10 years, needs to be revised and updated. The witnesses stated that the principal problems with the current definition is its focus on agricultural and other physical commodity futures. They further stated that, depending on its interpretation, the current definition may not cover certain important new uses of financial futures and options by institutional investors, such as pension funds and mutual funds, and by the investment advisers, bank trust departments and insurance companies that manage such funds. The witnesses recommended that the Commission revise its definition of hedging and that the definition focus on the uses of the new financial futures and options products.

The Committee agrees that the Act provides the Commission with the power to make any needed revisions in the hedging defini-

tion and that no statutory changes are needed for this purpose. The only limit section 4a(3) places the Commission's power to define hedging is that the definition must be consistent with the purposes of the Act. In this context, a principal purpose of the Act, as set forth in section 4a(1), is that of preventing excessive speculation which causes sudden or unreasonable fluctuations or unwarranted changes in commodity prices. Within this broad parameter, the Commission clearly has the necessary power, as well as the responsibility, to define hedging in a way that is consistent with the current needs and practices of the industry.

The Committee also urges the Commission to undertake a review of its hedging definition for the purpose of ensuring that the definition is, in fact, consistent with the legitimate needs and practices of the industry. As part of this review, the Committee intends that the Commission consider the following three specific questions: First, should the concept of prudent risk management be incorporated in the general definition of hedging as an alternative to the risk reduction standard? Second, should the enumerated list of hedging transactions be expanded to include a long futures position against holdings of cash or cash-like exposures? Third, are there other uses of futures or options positions that should be eligible for consideration under the nonenumerated portion of the hedging definition?

In addition, the Committee intends that the Commission proceed with, and accord a priority to, the completion of its ongoing rule-making effort to incorporate options into the hedging definition. Further, the Committee urges the Commission to review its aggregation rules to determine whether modifications are needed to avoid unwarranted constraints on the use of financial futures and options by institutional investors.

In conducting these reviews, the Commission should be mindful of the larger role that its pronouncements may play in identifying the economic functions of the futures and options markets. The Commission's hedging definition may serve as a source of guidance concerning the legitimate uses of these markets for both current and potential market users, as well as for other regulatory agencies, Congress, and the general public. In exercising its powers, the Commission should recognize its role in this area and endeavor to balance its responsibilities for orderly markets with the objective of full commercial utilization of options futures markets.

Committee action

By voice vote, the Committee ordered S. 2045, as amended, reported to the Senate.

ROLLCALL VOTE

Senator Heflin proposed to amendment to section 8a(5) of the Commodity Exchange Act to require the Commission to (1) consider the costs and benefits of and alternatives to all proposed and final rules and publish such findings in the Federal Register, and (2) consider whether any final or proposed rule will impair competition; the liquidity of futures and options markets; the discovery and price dissemination purposes of the futures and options markets;

the commercial use of futures and options markets for purposes of hedging; or the ability of self-regulatory organizations to fulfill their statutory duties.

Senator Lugar offered language to be included in the Committee report on S. 2045 as a substitute for the Heflin amendment. The language provides that the Committee believes the Commission should continue its practice, where appropriate, of discussing with interested parties prior to publishing any proposed and final rules the potential costs and benefits of such rules, such as the effect of the rules on market liquidity, competition, price discovery, hedging, and self-regulation. The substitute was approved by an 11 to 4 vote as follows:

Yeas: Dole (by proxy), Lugar, Cochran (by proxy), Boschwitz (by proxy), Wilson (by proxy), McConnell, Zorinsky, Leahy, Melcher, Boren, and Helms.

Nays: Hawkins (by proxy), Pryor (by proxy), Dixon, and Heflin.

SECTION-BY-SECTION ANALYSIS

Short title

Section 1 provides that the Act may be cited as the "Futures Trading Act of 1986."

Fraudulent practices

Section 101 of the bill amends section 4b of the Commodity Exchange Act to make explicit that the prohibition against fraud and other abusive practices specified in the section applies to the offer or sale of all commodity futures contracts, whether or not the contracts are traded on exchanges approved as contract markets by the Commission.

Section 4b of the Act generally proscribes fraud and other abusive practices in connection with commodity futures contracts made, or to be made, "on or subject to the rules of any contract market." Section 101 of the bill deletes the phrase "on or subject to the rules of any contract market." This makes clear that the prohibitions in section 4b of the Act apply to the offer or sale of all commodity futures contracts.

Section 101 also adds a new subsection (c) to section 4b of the Act to provide a limited exemption from the provisions of the section. The new subsection specifies that nothing in section 4b applies to activity occurring on a board of trade, exchange, or market, or any clearinghouse for such board of trade, exchange, or market, located outside the United States, its territories or possessions, involving any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of such board of trade, exchange, or market.

This exemption clarifies that any antifraud enforcement action brought under section 4b involving foreign futures contracts will not be directed at the rules of, or trading practices occurring on, foreign boards of trade, exchanges, or markets, or at the terms or conditions of the futures contracts traded on such boards of trade, exchanges, or markets. The Committee understands that activities on certain foreign markets include kerb trading or after-hours

trading and intends that this trading be included in the exemption from the provisions of section 4b.

The exemption will not apply to fraudulent activities that, while subject to the rules of an exchange, do not take place on an exchange. For example, many foreign exchanges have rules proscribing fraud in the solicitation of futures contracts. If section 4b did not reach such conduct, persons could commit fraud on United States citizens, for example, by accepting customer funds with no intention of transmitting the money to execute contracts on the foreign exchange, and the fraud could arguably not be prosecuted under section 4b of the Commodity Exchange Act. The Committee amendment ensures that such conduct is subject to both civil and criminal prosecution under section 4b.

Section 101 also designates the first and second unnumbered paragraphs of section 4b as subsections (a) and (b), respectively, and appropriately redesignates other clauses and subclauses of that section.

Extraterritorial service of subpoenas

Section 102 of the bill amends section 6(b) of the Commodity Exchange Act to expressly empower the Commission to require the appearance of witnesses and the production of records from any foreign country or jurisdiction in connection with Commission investigations. A subpoena issued under this provision may be served on any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.

Section 102 adds to section 6(b) the explicit congressional mandate for the extraterritorial service of subpoenas that the Court of Appeals for the District of Columbia found lacking in *Commodity Futures Trading Commission v. Nahas*, 738 F.2d 487 (D.C. Cir. 1984).

In authorizing this explicit mandate, the Committee recognizes the importance of the Commission's ability to obtain information from foreign nationals who trade in the United States markets. Such information is necessary for the Commission to perform its investigatory and surveillance responsibilities to ensure that the markets are safe for all participants, domestic and foreign. However, the Committee recognizes that the Commission does not anticipate exercising this authority on a routine basis.

The Committee understands the Commission has traditionally consulted with the Department of State, as it did in the *Nahas* case, to find a means of contacting foreign nationals in a way that seeks to avoid offending the foreign nation. The Committee further understands that the Commission intends to maintain that practice, where practicable. The Committee also understands that, where appropriate, the Commission will consult through the State Department with representatives of the foreign nation, with a view toward minimizing any perceived intrusion upon that nation's sovereignty. In addition, where there are particular treaties or governmental mutual assistance guarantees entered into or made for the purpose of obtaining information normally obtained through the use of a subpoena issued under this authority, the Committee in-

tends that the Commission use such treaties or mutual assistance guarantees, to the extent practicable.

Ex parte appointment of temporary receivers

Section 103 of the bill amends section 6c of the Commodity Exchange Act to authorize the Commission to seek an ex parte order for the appointment of a temporary receiver to administer the provisions of any other ex parte restraining order and to perform such other duties as the court may consider appropriate.

Section 6c of the Act, while generally prohibiting ex parte restraining orders, empowers the Commission to enter Federal court and seek a restraining order, without notice to the party against whom the order will be enforced, to prohibit the party from (1) destroying, altering, or disposing of books and records; (2) refusing to allow representatives of the Commission to examine such books and records; and (3) withdrawing, transferring, removing, dissipating, or disposing of funds, assets, or other property.

The amendment to section 6c will allow the Commission to seek the ex parte appointment of a temporary receiver to administer any other ex parte restraining order and to perform such other duties as the Court may specify.

Definitions (relating to leverage transactions)

Section 201 of the bill amends section 2(a)(1)(A) of the Commodity Exchange Act (relating to definitions of terms used under the Act) to remove from the Commission's grant of exclusive jurisdiction leverage transactions subject to regulation by the Commission under section 19 of the Act.

Section 201 also amends section 2(a)(1)(A) of the Act to delete from the definition of the term "commodity trading advisor" all references to any person who, for compensation or profit, engages in the business of advising others as to value of or the advisability of trading in any leverage transaction authorized under section 19 of the Act.

These are two of the provisions of title II of the bill that amend the Act to end the separate regulation of leverage transactions under the Act.

Penalty for manipulation of prices (relating to leverage transactions)

Section 202 of the bill amends section 9(b) of the Commodity Exchange Act to delete the criminal penalty for knowingly violating the provisions of section 19 of the Act, the section specifying the parameters for the regulation of leverage transactions.

This is one of the provisions of title II of the bill that amends the Act to end the separate regulation of leverage transactions under the Act.

Penalty for prohibited transactions (relating to leverage transactions)

Section 203 of the bill amends section 9(d) the Commodity Exchange Act to delete the criminal penalty applicable to any direct or indirect participation in any leverage transaction by any Commissioner, or any employee or agent of the Commission.

This is one of the provisions of title II of the bill that amends the Act to end the separate regulation of leverage transactions under the Act.

Penalty for use of nonpublic information in leverage transactions

Section 204 of the bill amends section 9(e) of the Commodity Exchange Act to delete the criminal penalty applicable to the use, by any Commissioner or employee or agent of the Commission, of any nonpublic information acquired through the individual's association with the Commission to directly or indirectly assist any other person in participating in any leverage transaction.

This is one of the provisions of title II of the bill that amends the Act to end the separate regulation of leverage transactions under the Act.

Relation of leverage transactions to other laws

Section 205 of the bill amends section 12(e)(2) of the Commodity Exchange Act to delete the reference to section 19 of the Act from the provision providing that nothing in the Act supersedes or preempts the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest, that is not subject to regulation by the Commission under, among others, section 19 of the Act.

This is one of the provisions of title II of the bill that amends the Act to end the separate regulation of leverage transactions under the Act.

Repeal of regulatory authority

Section 206 of the bill repeals section 19 of the Commodity Exchange Act, which provides the authority and framework for the separate regulation of leverage transactions under the Act. Under section 19, leverage transactions in agricultural commodities are prohibited; no person can enter into leverage transactions in gold or silver bullion or coins that are contrary to any Commission rule, regulation, or order designed to ensure the financial solvency of the transactions or prevent manipulation or fraud; and the Commission is required to regulate leverage transactions in authorized commodities under terms and conditions prescribed by rule, regulation, or order.

Private right of action applicable to leverage transactions

Section 207 of the bill amends section 22(a)(1)(C) of the Commodity Exchange Act to delete leverage transactions from the statutory private right of action for violation of the Act.

Under section 22(a)(1)(C), any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates the Act or willfully aids and abets a violation is liable to the person injured for actual damages caused by such violation. The person injured must have been engaged, with the injuring party, in one or more of several types of transactions referred to in section 22, including the purchase or sale, or the placing of an order for the purchase or

sale, of a leverage contract subject to regulation under section 19 of the Act.

This is one of the provisions of title II of the bill that amends the Act to end the regulation of leverage transactions under the Act.

The repeal of the basis for regulation of leverage transactions under section 19 of the Commodity Exchange Act will have no effect on any cause of action (involving leverage transactions regulated under section 19) that arises under the operation of section 22 of the Act prior to the effective date of title II of the bill. The Committee does not intend, through the operation of title II, to cut off the rights of any plaintiff who has a cause of action under section 22 that is based on the purchase or sale, or an order for the purchase or sale, of a contract subject to the provisions of section 19 of the Act.

Effective date of title II (relating to leverage transactions)

Section 208 of the bill provides that the amendments made by title II of the bill (relating to leverage transactions) are to become effective 2 years after the date of enactment of the bill.

Disciplinary actions of registered futures associations

Section 301 of the bill revises section 17(h) of the Commodity Exchange Act, which relates to Commission review of disciplinary actions taken by a registered futures association. The major change from current law is the addition of a provision providing that the application for Commission review of such disciplinary actions will not automatically stay the imposition of the disciplinary sanction imposed by the registered futures association. The section also contains a requirement that the Commission establish expedited procedures for considering requests for stays and an explicit requirement that a registered futures association promptly file with the Commission notice of any final disciplinary action taken.

Specifically, revised section 17(h) provides that if a registered futures association takes final disciplinary action against any member of the association, or any person associated with such a member, or denies admission to any person seeking membership in the association, or bars any person from being associated with a member, the association must promptly file notice of such action with the Commission. The notice is to be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate to carry out the purposes of the Act.

Any action, with respect to which a registered futures association is required to file notice, is subject to review by the Commission (1) on motion of the Commission, or (2) on application by any person aggrieved by the action. Any person seeking review of a registered futures association action must apply for such review and must file such application within 30 days after the date the notice of the association was filed with the Commission and received by the aggrieved person (whichever is later if they occur at different times), or within such longer period as the Commission may determine.

Application to the Commission for review, or the institution of review by the Commission on its own motion, will not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question

of a stay. Such a hearing may consist solely of the submission of affidavits or presentation of oral arguments.

The Commission is required to establish standards for expedited procedures to be used in the consideration of the request for a stay.

The Committee understands that the Commission generally employs well known judicial standards when it considers stay requests in other contexts—such as its enforcement proceedings—and anticipates that these standards will be employed in considering stay requests associated with registered futures association disciplinary actions. Under these standards, stay requests are regularly considered on an expedited basis when the sanction to be imposed is substantial, for example, a suspension from doing business. In establishing standards under this provision, the Committee understands that the Commission will take into account the extent to which the association gave the disciplined person an opportunity for a meaningful hearing prior to imposing the discipline.

Commission review of association action

Section 302 of the bill revises section 17(i) of the Commodity Exchange Act, which relates to Commission review of disciplinary actions taken by a registered futures association. The major changes from current law include (1) restriction of Commission review to final association action; (2) provision that the hearing before the Commission on such a review may consist solely of consideration of the record made before the association and an opportunity to present reasons for affirming, setting aside, or modifying the association's decision; (3) authority for the Commission to remand a case to the association for further proceedings; and (4) provision for appeal of a Commission order entered under this subsection to the appropriate United States court of appeals.

Specifically, revised section 17(i) of the Act provides that, in a proceeding to review final disciplinary action taken by a registered futures association against a member of the association or a person associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and an opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction), if the Commission finds—

(1) on the basis of the record in the proceeding before the association and such other matters as may be presented to the Commission, that the member or person associated with a member has engaged in such acts or practices or has failed to engage in such acts or practices;

(2) that the acts, practices, or failures to act, are in violation of the rules of the association as specified in the determination of the association; and

(3) that the rules of the association are and were applied in a manner consistent with the Act,

the Commission, by order, must so declare and, as appropriate, affirm or modify the sanction imposed by the association or remand the case to the association for further proceedings.

If, in such a review proceeding, the Commission makes no such finding, the Commission must by order set aside the sanction im-

posed by the association and, if appropriate, remand the case to the association for further proceedings.

If, after a proceeding conducted in accordance with this provision, the Commission finds that any penalty imposed on a member or person associated with a member is excessive, with due regard for the public interest, the Commission must by order cancel, reduce, or require the remission of the penalty.

In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association), the Commission must by order dismiss the proceeding for review if the Commission determines that—

- (1) the specific grounds on which the denial or bar is based exist in fact;
- (2) the denial or bar is in accordance with the rules of the association; and
- (3) the rules are and were applied in a manner consistent with the Act.

If no such determination is made, the Commission must, by order, set aside the action of the association and require the association to admit the applicant to membership in the association or to permit the person to be associated with a member.

Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under section 17(i) may file a petition for review with a United States court of appeals in accordance with section 6(b) of the Act.

Rule review procedures

Section 303 of the bill amends section 17(j) of the Commodity Exchange Act by striking out the provision of that section that requires the Commission to approve changes in or additions to the rules of a registered futures association within 30 days of their receipt by the Commission, if the association requests that the Commission approve such rules or after the Commission decides (on its own) to review the rules. This requirement is waived under the provision to be stricken, however, if the Commission notifies the registered futures association that it cannot complete its review within the 30-day period.

Certain prohibited transactions

Section 401 of the bill amends section 9(d) of the Commodity Exchange Act. Section 9(d), in general, makes it a felony for a Commissioner or employee or agent of the Commission to participate, directly or indirectly, in commodity futures, options, or leverage transactions or, with certain exceptions, in investment transactions in an actual commodity.

Specifically, section 401 amends section 9(d) to make the prohibition on investment transactions in actual commodities applicable only if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regula-

tion of the Commission, or if the investment transaction is made through the use of any instrument regulated by the Commission.

Section 401 also amends section 9(d) to provide that the basic prohibition in that section will not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of section 9(d).

Section 401 also deletes the second and third sentences of section 9(d). These provisions specify certain transactions to which the prohibition on participating in any investment transaction in an actual commodity does not apply and require that any Commissioner or employee or agent who participates in any such exempted transaction notify the Commission of such transaction in accordance with such regulations as the Commission may prescribe.

Authorization for appropriations

Section 402 of the bill amends section 12(d) of the Commodity Exchange Act to authorize the appropriation of such sums as may be required to carry out the Act for each of the fiscal years beginning October 1, 1986, and ending September 30, 1992.

Technical corrections

Section 403 of the bill makes a number of technical corrections in the Commodity Exchange Act. These include—

- (1) correcting the name of the Securities and Exchange Commission in section 2(a)(1)(B)(iv)(I);
- (2) correcting the misspelling of the word "participate" in section 5a(12);
- (3) Correcting an improper punctuation in the first sentence of section 9(c);
- (4) correcting the misspelling of "advance guaranty" in section 9(d);
- (5) repealing, as obsolete, section 11 of the Act, which provides that no fine or imprisonment could be imposed for any violation of the Commodity Exchange Act (as originally enacted) that occurred before the first day of the second month following its passage;
- (6) correcting the misspelling of "within" in the second full sentence of section 17(b)(2); and
- (7) changing an improper reference to "this title" to "this section" in section 17(k)(1).

ADMINISTRATION VIEWS

I.

By letter of April 22, 1986, to Chairman Helms, Susan M. Phillips, Chairman of the Commodity Futures Trading Commission, transmitted the Commission's views in support of S. 2045, as reported by the Committee. The letter from Ms. Phillips reads as follows:

COMMODITY FUTURES TRADING COMMISSION,
Washington, DC, April 22, 1986.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission congratulates you and the members of the Committee for the hard work and sound judgment reflected in S. 2045 as reported by the Committee on March 25, 1986. The Commission also wishes to acknowledge the substantial time, and effort contributed to this process by the Committee's staff, particularly Messrs. George S. Dunlop, Carl P. Rose, Terrance J. Wear and J. Robert Franks.

The Commission supports S. 2045, as reported by the Committee, which would reauthorize the Commission through September 30, 1992, and strengthen and improve upon certain provisions of the Commodity Exchange Act. S. 2045 is a further indication of the Committee's long-standing recognition of the important role of futures markets and the need for a strong, independent Commission with the necessary statutory tools to oversee those markets and to assure that vigorous action will be taken against those who would violate the law.

In particular, the Commission endorses the bill's provisions that clarify that the Act's principal anti-fraud provision, Section 4b, applies to the marketing of off-exchange futures contracts in the United States, that permit the Commission to proceed in court on ex parte basis to obtain the appointment of a temporary receiver, and that assure that the Commission will be in a position, in appropriate circumstances, to have its subpoenas served outside the United States. Similarly, the Commission is pleased with the amendments made by S. 2045 to the Act's provisions concerning registered futures associations, particularly the streamlining of the rule review process and the clarifications of the procedures and standards to be employed in connection with Commission review of association membership and disciplinary actions. The Commission also supports the Committee's decision to repeal the Act's regulatory provisions concerning leverage transactions and its decision to delay the effective date of that repeal for two years so that existing regulated leverage firms may have time to modify their present method of doing business.

The Commission regrets, however, that two of its proposals were not included in S. 2045 as adopted by the Committee. The Commission hopes that the members of the Committee and the Senate will receive the following comments on those proposals as reflective of our desire to provide a sound statutory scheme for the fair and effective regulation of the futures markets.

1. Alteration or supplementation of registered futures associations rules. As you know, the Commission has always been a proponent of the Congressionally mandated concept of self-regulation by the futures industry with federal oversight. However, to deny the Commission the authority to alter or supplement NFA rules in appropriate cases would hamper that oversight. Instead of continuous and effective oversight of this important mandatory membership organization, the Commission would have no alternative other than

to approve (or disapprove) NFA rules when they are first submitted; thereafter, the Commission would, for all intents and purposes, remain powerless to effect a change in NFA's rules that affect critical areas (such as registration and financial and sales practice requirements) where NFA, alone or in conjunction with the exchanges, has taken front-line responsibility for enforcement of the regulatory scheme. If NFA acts (or fails to act) and in so doing violates the Act, the Commission would have no alternative other than to initiate legal action against NFA. This would be unseemly and unnecessarily confrontational. (The Securities and Exchange Commission formerly had the same limited power to alter or supplement the rules of the National Association of Securities Dealers as the Commission now has with respect to NFA. The SEC's authority was broadened in 1975—after the enactment of the Commodity Futures Trading Commission Act of 1974—to remove the discrepancy between the treatment of the NASD and the securities exchanges under the law.) The Commission was authorized to alter or supplement exchange rules when it was established in 1974. The Commission continues to believe that it is time to make uniform the scheme of oversight which governs the self-regulatory organizations.

2. Appellate review. As you know, the Commission had proposed that judicial review of all final Commission action occur in the Courts of Appeals. The Commission wishes to make clear that its proposal is neither unique nor novel, nor does it deprive parties of adequate judicial process in challenging Commission regulations and other actions. Rather, the existing Commodity Exchange Act differs significantly from other regulatory statutes in that the actions of most other agencies, including their rulemaking activities, are reviewable in the first instance directly in the Courts of Appeals. Examples include the Federal Communications Commission, the Nuclear Regulatory Commission, the Interstate Commerce Commission, the Federal Reserve Board, the Federal Energy Regulatory Commission, the Federal Labor Relations Authority, and virtually all actions taken by the Securities and Exchange Commission. As in the case of these agencies, Court of Appeals review of CFTC actions would save both agency and judicial as well as private parties' resources by eliminating an unnecessary layer of review in the district court.

Moreover, we wish to emphasize that the Commission always develops a complete factual record and states the basis for its decision. Nothing is gained by trial level review of that record and decision, following by an identical Court of Appeals review. In fact, a Court of Appeals is better equipped than a district court to review an agency's record and reasons for its decisions because district courts usually conduct trials and hear new evidence. This is not done in review of agency action. In the past, the Commission has had a number of appeals filed in district court from its review of exchange disciplinary actions, as well as district court challenges to its industry-wide or exchange-specific rulemaking initiatives. None of these cases permitted new evidence to be heard in the District Court, and virtually all of these cases were eventually appealed to the Court of Appeals.

Finally, Court of Appeals review assures a more prompt and certain regulation of the industry. If the Commission's action is sustained by the Court of Appeals, the Commission decision takes effect without delay of a second layer of review. If, on the other hand, the Commission had compiled an inadequate record or otherwise erred in its decision, a Court of Appeals can quickly remand the case to the Commission for corrective action.

Please be assured that the concerns stated above with these two aspects of S. 2045 do not in any way detract from our support of this bill, or of the efforts that you and the other members of the Committee expended to report favorably on its passage.

Sincerely,

SUSAN M. PHILLIPS, *Chairman.*

II.

In a letter of March 24, 1986, to Chairman Helms and Senator Lugar, Chairman of the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation, Susan M. Phillips, Chairman of the Commodity Futures Trading Commission, stated the Commission's understanding with respect to the proposed amendments in S. 2045 relating to the Commission's authority to serve subpoenas outside of the United States and the scope of the antifraud prohibitions in section 4b of the Commodity Exchange Act. The letter reads as follows:

COMMODITY FUTURES TRADING COMMISSION,
Washington, DC, March 24, 1986.

Hon. JESSE HELMS,
Chairman, Senate Committee on Agriculture, Nutrition and Forestry.

Hon. RICHARD G. LUGAR,
Chairman, Senate Subcommittee on Agricultural Research, Conservation, Forestry and General Legislation.
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission has been apprised of two communications concerning the proposed amendment of the Commodity Exchange Act to clarify the Commission's authority to serve subpoenas outside of the United States. The first of these communications, a note dated February 20, 1986 from the government of the United Kingdom to the Department of State (Note No. 29) suggests the view that the mechanism for obtaining information from sources in Great Britain should result from bilateral agreement between our two governments rather than by legislative enactment. This view is echoed in the second communication a statement dated February 21, 1986 of five London exchanges,¹ which also expresses concern over the Commission's proposal to amend Section 4b of the Act. Because these communications, and particularly that of the London exchanges, indicate a misapprehension of the effect of the amend-

¹ The exchanges on whose behalf the statement was made are: the London Commodity Exchange Company Limited, the Metal Market and Exchange Company Limited, the London International Financial Futures Exchange Limited, the Grain and Feed Trade Association, and the International Commodities Clearing House Limited.

ments as well as the background of the events that led to their proposal, the Commission offers this brief reply, and requests that it be included in the hearing record.

The Commission has proposed an amendment to Section 6(b) of the Act to clarify the ambiguity created by the decision in *CFTC v. Nahas*, 738 F. 2d 487 (D.C. Cir. 1984) concerning the Commission's authority to investigate trading in U.S. markets by persons and entities located overseas. The amendment derives from the Commission's responsibility for the integrity of the U.S. markets and its purpose is to support the Commission's efforts to that end. Thus, the amendment is directed solely to the detection and prosecution of violations of U.S. law in connection with conduct in United States markets.

The statement of the London exchanges fails to distinguish the issue of the method by which subpoenas are served overseas, which was the subject of the D.C. Circuit's opinion in *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F. 2d 1300 (D.C. Cir. 1980), from the issue of whether extraterritorial service of subpoenas is authorized in the first instance, regardless of the method of service employed, which was the subject of the decision in *CFTC v. Nahas*. The CFTC proposed amendment principally addresses the latter issue.

The Commission has sought congressional clarification of its authority to serve subpoenas extraterritorially because the Commission considers that authority to be critical to its ability to investigate possible violations of the Commodity Exchange Act by persons located overseas. The Commission does not anticipate that exercising this extraterritorial authority will be a routine matter. However, the need to be able to exercise such authority in appropriate cases has grown as participation in United States futures markets has become increasingly international in character.

The Commission is sensitive to the concerns which appear to underlie both the British Government note and the statement of the London exchanges. The Commission has traditionally consulted with the State Department, as it did in the *Nahas* case, to find a means of contacting foreign nationals in a way that seeks to avoid offending the foreign nation. The Commission intends to maintain that practice, where practicable.

In like fashion, although dependent on the facts and circumstances of a particular case, where appropriate the Commission intends to consult through the State Department with the representative of the receiving nation with a view toward minimizing any perceived intrusion upon that nation's sovereignty. In addition, where there are particular treaties or governmental mutual assistance guarantees, the Commission would contemplate utilizing them to the extent practicable.

The Commission wishes to assure the Committee, the British Government and London exchanges, as well as other interested persons of its sensitivity to the concerns expressed in the two communications and its desire to perform its responsibilities to maintain the integrity of the U.S. markets in a way that will take those concerns into consideration.

In their statement, the London exchanges also expressed concern that the Commission's proposal to delete from Section 4b of the Act

the reference to futures contracts traded "on or subject to the rules of any contract market" could be read to extend the antifraud coverage of Section 4b to futures contracts traded on foreign exchanges. The Commission wishes to make clear that its proposal to amend Section 4b is primarily intended to supplement the Commission's enforcement efforts under Section 4(a) of the Act, which makes it unlawful to market off-exchange futures contracts in the United States. The amendment would clarify that purveyors of illegal off-exchange futures contracts in the U.S. who also commit fraud could be charged under the antifraud provisions of Section 4b of the Act, as well as Section 4(a). The Commission anticipates, therefore, that an amended Section 4b would most often be invoked in cases also alleging violations of Section 4(a). In this connection, it should be pointed out that Section 4(a) exempts the sale of futures contracts traded on or subject to the rules of exchanges located outside the United States.

The Commission nevertheless agrees with the London exchanges that amended Section 4b can be read to cover fraud committed in connection with foreign futures contracts. However, this is not a new concept under the Commodity Exchange Act. As the London exchanges indicate, another section of the Act, Section 4(b), and Commission Rule 30.02 presently deal with foreign futures contracts. Section 4(b), enacted in 1982, supplements existing Commission authority under 2a(1) and 4c and authorizes the Commission to develop regulations—including antifraud regulations—governing the marketing of foreign futures contracts by persons located in the United States. Those regulations may not govern the rules or actions of foreign exchanges or the terms of their contracts. Rule 30.02, adopted in 1975, prohibits fraud in connection with the marketing in the United States of contracts traded on foreign commodity exchanges. This Rule could be used, for instance, to stop the flow of fraudulent solicitation materials into the United States.

The Commission wishes to assure the Committee and the London exchanges that, given the stated purposes underlying its Section 4b proposal and its existing authority under Section 4(b) and Rule 30.02, the Commission would not change Section 4b violations in connection with activity that occurs on a foreign board of trade. However, there may be instances, particularly involving fraudulent retail sales practices in the United States, when the Commission should be able to proceed under Section 4b in cases where fraud is committed upon U.S. citizens in connection with foreign futures contracts. Further, violations of Section 4b clearly may be prosecuted criminally, whereas violations of Rule 30.02 or Section 4(b) rules arguably may not. Thus, for example, the Commission could invoke Section 4b against operators who entice United States citizens to trade on the London exchanges but who either have no intention of sending customers' money to London for that purpose or intend to churn the customers' accounts to generate commissions. Such fraudulent conduct amounts to nothing less than theft and is appropriately the subject of Commission and criminal law enforcement action. The Commission is confident that the London exchanges would agree that the misuse of their name and reputation in such unlawful conduct should not go unpunished.

The Commission wishes to emphasize that, in keeping with the restrictions in Section 4(b), antifraud enforcement efforts under Section 4b involving foreign futures contracts would not be directed at the rules of, or trading practices occurring on, the London exchanges, or at the terms or conditions of their futures contracts, but rather at the unscrupulous operators who seek to commit fraud in the United States. To accomplish this result, the Commission is prepared to offer an amendment to Section 101 of S. 2045.

Sincerely,

SUSAN M. PHILLIPS, *Chairman.*

COST ESTIMATE

I.

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates the cost of carrying out the provisions of the bill to be \$28.4 million in fiscal year 1987, \$28.9 million in fiscal year 1988, \$29.4 million in fiscal year 1989, \$30 million in fiscal year 1990, and \$30.6 million in fiscal year 1991. This estimate is based on the cost estimate provided by the Congressional Budget Office.

II.

The cost estimate prepared by the Congressional Budget Office reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 1986.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for S. 2045, the Futures Trading Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2045.
2. Bill title: Future Trading Act of 1986.
3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, March 25, 1986.
4. Bill purpose: S. 2045 would authorize the appropriation of such sums as may be necessary in each of the fiscal years 1987 through 1992 to carry out the activities of the Commodity Futures Trading Commission.

The bill would also amend the Commodity Exchange Act to: clarify that prohibitions against fraud and other abusive practices

apply to the offer or sale of all commodity futures contracts; allow the Commission to serve administrative subpoenas on persons located outside the United States; allow the Commission to seek, in federal district court, the ex parte appointment of a temporary receiver; make leverage transactions subject to the same federal trading rules as commodity futures contracts, after the fiscal year 1988; amend and expand the Commission's authority to regulate and oversee registered future associations; and eliminate certain restrictions on the participation by a commissioner or commission staff member in commodity futures, options, or leverage transactions.

Fiscal year 1986 funding to date for the Commodity Futures Trading Commission is \$28.0 million, after the reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985. The President is requesting \$30.4 million for fiscal year 1987.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1987	1988	1989	1990	1991
Estimated authorization level	28.4	28.9	29.4	30.0	30.6
Estimated outlays	25.7	28.9	29.4	30.0	30.6

Including outlays from prior years' appropriations to date, total outlays in the fiscal year 1987 are estimated to be \$28.4 million.

The costs of this bill fall within budget function 370.

Basis of Estimate: In the absence of a specific authorization and because the Commodity Futures Trading Commission expects to maintain its current program level, the CBO baseline has been used to estimate authorization levels and outlays. Outlays have been estimated based on historical spending patterns for the Commodity Futures Trading Commission.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: This estimate supersedes the previous CBO estimate for S. 2045, prepared on April 23, 1986, which incorrectly stated that the bill would provide that all final Commission actions would be reviewable only in the United States Court of Appeals. The estimated costs are the same in both estimates.

9. Prepared by: Theresa Gullo.

10. Estimate approved by: C.G. Nuckulz (for James L. Blum, Assistant Director for Budget Analysis).

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 2045.

Enforcement

Implementation of the provisions in S. 2045 dealing with the enforcement of the Commodity Exchange Act will not have a materi-

al regulatory impact on the futures and options industry or on market users, since these individuals and firms are already subject to regulation under the Commodity Exchange Act. The provisions will also not materially affect the privacy of the individuals and firms covered by these provisions, nor materially increase the amount of paperwork performed by them.

The bill's enforcement provisions clarify that the Act's principal anti-fraud provision, section 4b, applies to the marketing of off-exchange futures contracts in the United States; authorize the Commission to proceed in court on an ex parte basis to obtain the appointment of a temporary receiver; and assure that the Commission will be in a position to obtain service of its administrative subpoenas outside the United States. These provisions will, if at all, be used during the course of Commission investigations and law enforcement actions taken against suspected violators. The investigations and legal actions will be undertaken to ensure compliance with existing provisions of law and Commission regulations. Only if the individuals and firms violate the Commodity Exchange Act or the regulations issued under it will these provisions impact on them.

Leverage

S. 2045 repeals the provisions in the Commodity Exchange Act dealing with the regulation of leverage transactions as separate commodity instruments, effective 2 years after the effective date of the bill. In this instance, the bill will eliminate the existing Federal regulatory burden on the two firms registered with the Commission that are engaged in leverage transactions.

The economic impact on these firms could be substantial, however, since these firms will have to cease their current operations or modify them substantially in order to comply with the law after 2 years. Nevertheless, the 2-year delay will give the affected leverage firms time to phase out of the leverage business and into other related businesses, such as the cash sale of metals or the sale of metals on an installment basis. This portion of the bill has no material impact on the privacy of the two firms affected by the leverage provisions, nor will the bill increase the amount of paperwork performed by them.

Registered futures associations

S. 2045 amends certain of the provisions of the Commodity Exchange Act that pertain to registered futures associations. There is only one registered futures association, the National Futures Association, at the current time. Specifically, the bill simplifies the process of reviewing rules of registered futures associations and clarifies the procedures and standards to be used by the Commission in its review of association action dealing with association membership and discipline. The bill ensures that existing regulations in this area will be administered more effectively. These provisions of S. 2045 will have no impact upon the personal privacy of the persons and firms affected, nor will they increase the amount of paperwork performed by them.

Investments by Commissioners and Commission employees

S. 2045 relaxes existing restrictions on permissible investments by Commissioners and Commission employees. Under the bill, investments in actual commodities will be permitted so long as (1) the transaction is not barred by Commission regulations, (2) no nonpublic information is used in making the investment, and (3) no instrument regulated by the Commission is used in the transaction. In addition, Commissioners and Commission employees would be allowed to engage in limited investments in futures and option contracts, if the Commission determines that such investments do not present a conflict of interest or an appearance of conflict of interest.

The five Commissioners and approximately 485 Commission employees will be affected by the provision. Under current law, however, the Commission deals with these matters on a case-by-case basis. Consequently, the provisions in the bill will reduce the amount of time the Commission actually spends on these matters.

This portion of the bill will have no additional impact on the privacy of the Commissioners and Commission employees; nor will it increase the amount of paperwork performed by them.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

COMMODITY EXCHANGE ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act".

SEC. 2. (a)(1)(A) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85-839, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in: *Provided*, That the Commission shall have exclusive jurisdiction, except to the extent otherwise provided in subparagraph (B) of this paragraph, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer" "put", "call", "advance guaranty", or "decline guaranty"), and transactions in-

volving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to section 5 of this Act or any other board of trade, exchange, or market [, and transactions subject to regulation by the Commission pursuant to section 19 of this Act]: * *And provided further, That, except as hereinabove provided, nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (ii) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State. Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade. The term "future delivery," as used herein, shall not include any sale of any cash commodity for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. The words "cooperative association of producers" shall mean any cooperative association, corporate or otherwise, not less than 75 per centum in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with an Act of Congress of February 18, 1922 (U.S.C. 1934 ed., title 7, secs. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations, provided that business done for or with the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922. The words "member of a contract market" shall mean and include individuals, associations, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given mem-*

* Note: This amendment will not become effective until 2 years after the date of enactment of the Futures Trading Act of 1986.

bers' trading privileges thereon. The words "futures commission merchant" shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. The term "introducing broker" shall mean any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. The words "floor broker" shall mean any person who, in or surrounding any "pit", "ring", "post", or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market. The words "the Commission" shall mean the Commodity Futures Trading Commission established under paragraph (2) of this subsection. The term "commodity trading advisor" shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market[,] or * any commodity option authorized under section 4c, [or any leverage transaction authorized under section 19,] * or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided further*, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision. The term "commodity pool operator" shall mean any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or re-

ceives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

(B) Notwithstanding any other provision of law—

(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however,* That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measured of, and shall reflect, the market for all publicly traded equity or debt se-

curities or a substantial segment thereof, or shall be comparable to such measure.

(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph.

(iv)(I) The Commission shall consult with the Securities and Exchange Commission with respect to any application which is submitted by a board of trade before December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. If, no later than fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) of this subparagraph is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the [Securities Exchange Commission] *Securities and Exchange Commission* otherwise agree. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

(II) Effective for any application submitted by a board of trade on or after December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities, the Commission shall transmit a copy of such application to the Securities and Exchange Commission for review. The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing

on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 6(a) of this Act.

(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph, any group or index of such securities or any interest therein or based on the value thereof.

* * * * *

SEC. 4b. (a) It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, [on or subject to the rules of any contract market,] for or on behalf of any other person if such contract for future delivery is or may be used for [(a)] (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or [(b)] (B) determining the price basis of any transaction in interstate commerce in such commodity, or [(c)] (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

[(A)] (i) to cheat or defraud or attempt to cheat or defraud such other person;

[(B)] (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

[(C)] (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

[(D)] (iv) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such

person, or become the seller in respect to any buying order of such person.

(b) Nothing in this section or in any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month, from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(c) *Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of such board of trade, exchange, or market.*

* * * * *

SEC. 5a. Each contract market shall—

(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

* * * * *

(12) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons

an opportunity to ~~participate~~ *participate* in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceeding with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make a rule effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may immediately make effective a temporary rule dealing with such emergency if the contract market notifies the Commission of such action with a complete explanation of the emergency involved.

SEC. 6. * * *

(b) If the Commission has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be

stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission, or before an Administrative Law Judge designated by the Commission which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act and for the purpose of any investigation or proceeding under this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States [or any State], any State, or any foreign country or jurisdiction at any designated place of hearing. *A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.* In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered with the Commission in any capacity, may suspend, for a period not to exceed six months, or revoke, the registration of such person, and may assess such

person a civil penalty of not more than \$100,000 for each such violation. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person, praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record therefore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

* * * * *

SEC. 6c. Whenever it shall appear to the Commission that any contract market or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents on which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued ex parte by said court. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this Act or any such rule, reg-

ulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued *ex parte*. Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found. In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action. Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

* * * * *

SEC. 9. (a) It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person registered or required to be registered under this Act, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$100,000, together with the costs of prosecution. The word "value" as used in this subsection means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. A person convicted of a felony under this subsection shall be suspended from registration under this Act and shall be denied registration or reregistration for five years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest. The Commission may upon petition later review such disqualification and for good cause shown reduce the period thereof.

(b) It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity, or knowingly to deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, section 4c(b) through section

4c(e), section 4h or* section 4o(l) [or section 19]* of this Act, or knowingly to make any false or misleading statement of a material fact in any registration application or report filed with the Commission, or knowingly to omit in any application or report any material fact that is required to be stated therein. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than \$100,000, together with the costs of prosecution. A person convicted of a felony under this subsection shall be suspended from any registration under this Act, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

(c) Except as provided in subsections (a), (b), (d), and (e) of this section, it shall be a misdemeanor punishable by a fine of not more than \$100,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, for any person to violate any provisions of, section 4a, section 4c(a), section 4d, section 4e, section 4i, [section 4k.] *section 4k*, section 4m, section 4o(2), or section 8b, or to fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required. A person convicted under this subsection of knowingly violating the provisions of section 4a shall be suspended from any registration under this Act, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

(d) It shall be a felony punishable by a fine of not more than \$100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", ["advance guarantee"] *"advance guaranty"*, or "decline guaranty", [or any transaction for the delivery of any commodity under a standardized contract commonly known to the

* Note: This amendment will not become effective until 2 years after the date of enactment of the Futures Trading Act of 1986.

trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract,]* or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is made through the use of any instrument regulated by the Commission, except that the prohibitions in this sentence shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection. [Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public.]

(e) It shall be a felony punishable by a fine of not more than \$100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call",

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"advance guaranty", or "decline guaranty" [, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract];* and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty" [, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract] *.

* * * * *

[SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.]

SEC. 12. The Commission may cooperate with any department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, or any person.

* * * * *

[(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986.]

(d) There are authorized to be appropriated to carry out this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1992.

(e) Nothing in this Act shall supersede or preempt—

- (1) criminal prosecution under any Federal criminal statute;
- (2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C)

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that is not subject to regulation by the Commission under section 4c [or 19]* of this Act; or

(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation.

The Commission may refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action, or proceedings as that department or agency shall deem appropriate.

• • • • •
SEC. 17. (a) • • •

(b) An applicant association shall not be registered as a futures association unless Commission finds, under standards established by the Commission, that—

(1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;

(2) the rules of the association provide that any person registered under this Act, contract market, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated [with in] [within] the meaning of "associated person" as set forth in section 4k of this Act, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a contract market or has been and is barred or suspended from being associated with all members of such contract market, for violation of any rule of such contract market;

• • • • •
[(h) If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission,

*Note: This amendment will not become effective until 2 years after the date of enactment of the Futures Trading Act of 1986.

on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (i) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).]

(h)(1)(A) If any registered futures association takes final disciplinary action against any member of the association or any person associated with such a member or denies admission to any person seeking membership in the association, or bars any person from being associated with a member, the association shall promptly file notice thereof with the Commission.

(B) The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate to carry out the purposes of this Act.

(2)(A) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission—

(i) on the motion of the Commission; or

(ii) on application by any person aggrieved by the action filed within—

(I) 30 days after the date the notice was filed with the Commission and received by the aggrieved person; or

(II) such longer period as the Commission may determine.

(B) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

(C) The Commission shall establish standards for expedited procedures to be used in the consideration of the request for a stay.

[(i)(1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

[(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

[(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable

principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

[(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

[(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriated notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member.]

(i)(1) In a proceeding to review final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the Commission finds—

(i) on the basis of the record in the proceeding before the association and such other matters as may be presented to the Commission, that the member or person associated with a member has engaged in such acts or practices or has failed to engage in such acts or practices;

(ii) that the acts, practices, or failures to act, are in violation of the rules of the association as specified in the determination of the association; and

(iii) that the rules of the association are and were applied in a manner consistent with this Act,

the Commission shall, by order, so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

(B) if the Commission makes no such finding, the Commission shall, by order—

(i) set aside the sanction imposed by the association; and

(ii) if appropriate, remand the case to the association for further proceedings.

(2) If, after a proceeding conducted in accordance with paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive, with due regard for

the public interest, the Commission shall, by order, cancel, reduce, or require the remission of the penalty.

(3)(A) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction), the Commission shall, by order, dismiss the proceeding for review if the Commission determines that—

(i) the specific grounds on which the denial or bar is based exist in fact;

(ii) the denial or bar is in accordance with the rules of the association; and

(iii) the rules are and were applied in a manner consistent with this Act.

(B) If no such determination is made, the Commission shall, by order, set aside the action of the association and require the association to admit the applicant to membership in the association or to permit the person to be associated with a member.

(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in accordance with section 6(b).

(j) Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. [The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review with such period of time.] The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations issued pursuant to this Act, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this Act or the regulations issued pursuant to this Act. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such

longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection.

(k)(1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice and opportunity for hearing, it appear to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this [title] section.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to—

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member of the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method for adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

* * * * *

[SEC. 19. (a) No persons shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

[(b) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under standardized contract described in subsection, (a) of this section, contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipu-

lation or fraud: *Provided*. That such rule, regulation, or order may be made only after notice and opportunity for hearing.

[(c) The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by rule, regulation, or order made only after notice and opportunity for a hearing. The Commission may set different terms and conditions for such transactions involving different commodities. Notwithstanding any other provision of this section, the Commission may prohibit any transaction for the delivery of any commodity under a standardized contract described in subsection (a) of this section that is not permitted by the rules, regulations and orders of the Commission in effect on December 9, 1982, if the Commission determines that any such transactions would be contrary to the public interest.] *

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SEC. 22. (a)(1) Any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in clauses (A) through (D) of this paragraph and caused by such violation to any other person—

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity); or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 4c of this Act (other than an option purchased or sold on a contract market or other board of trade); or *

[(ii) a contract subject to section 19 of this Act; or] *

[(iii)] (ii) * an interest or participation in a commodity pool; or

(D) who purchased or sold a contract referred to in clause (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

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* Note: This amendment will not become effective until 2 years after the date of enactment of the Futures Trading Act of 1986.